

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE GREAT SEAL MOORISH SCIENCE	:	NO. 05-345
TEMPLE OF AMERICA, INCORPORATED,	:	
EMBRYO CIRCLE SEVEN MOORISH SCIENCE	:	
TEMPLE OF AMERICA, INCORPORATED,	:	
CONTINENTAL CONGRESS, MOORS ORDER	:	
OF THE ROUND TABLE, MOORISH DIVE	:	
AND NATIONAL MOVEMENT, AND ALL	:	
MINISTERS CONSULS, MOORISH	:	
NATIONALS, DIPLOMATS OFFSPRING,	:	
AND FAMILY MEMBERS, CITIZENS, ET AL	:	
v.	:	
	:	
STATE OF NEW JERSEY; ASBURY PARK	:	
POLICE DEPARTMENT; SGT. JOHN	:	
BROYLES; OFFICER JOSEPH P. SPALLINA;	:	
OFFICER JOHN P. SOSDIAN III; PATRICIA	:	JURY TRIAL DEMANDED
GREEN, COURT CLERK, ET AL; WALL	:	
TOWNSHIP POLICE DEPARTMENT; SGT.	:	
LANCELOTTI; SGT. BROCKLEY, ET AL;	:	
JIM'S TOWING; RICHARD'S AUTO BODY;	:	
AND ALL CITY, COUNTY AND STATE	:	
AGENTS, ET AL	:	

**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2005, upon consideration of Motion of Defendant Asbury Park Police Department, to Dismiss Plaintiffs' Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6), and any Response thereto, it is hereby ORDERED and DECREED that Plaintiff's Complaint is dismissed.

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U.S.D.C., J.

MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOGGIN  
BY: John P. Gonzales, Esquire  
Identification Number 71265  
Suite 1002, One Montgomery Plaza  
Norristown, PA 19401  
(610) 292-4470

Attorney for Defendant

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**MOTION OF DEFENDANT CITY ASBURY PARK POLICE DEPARTMENT'S, TO**  
**DISMISS PLAINTIFFS' COMPLAINT**  
**PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6)**

Defendant Asbury Park Police Department, by and through its undersigned counsel,  
Marshall, Dennehey, Warner, Coleman & Goggin and John P. Gonzales, Esquire, hereby file this  
Motion to Dismiss Plaintiffs' Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6)  
and aver the following:

1. Plaintiffs have filed the present civil action against moving Defendant, arising out incidents that alleged occurred involving the Asbury Park Police Department. (A copy of Plaintiffs' Complaint is attached hereto as Exhibit "A").

2. Plaintiffs have brought forth various allegations against all of the defendants, including the Defendant Asbury Park Police Department. It is not apparent based on the language of the Complaint all of the causes of action that plaintiffs have asserted.

3. For the reasons more fully set forth in the Memorandum of Law, which is attached hereto and incorporated herein by reference, Plaintiffs' Complaint should be dismissed with prejudice because Asbury Park Police Department is not a citizen of this venue and is a public entity within the State of New Jersey.

WHEREFORE, moving Defendants respectfully request that this Honorable Court dismiss Plaintiffs' Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6).

Respectfully submitted,

MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOGGIN

s/JG847  
JOHN P. GONZALES, ESQUIRE  
Attorney for Defendants  
Suite 1002, One Montgomery Plaza  
Norristown, PA 19401  
610-292-4470 (Phone)  
610-292-0410 (Fax)  
jgonzales@mdwccg.com  
PA 71265

MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOGGIN

Attorney for Defendant

BY: John P. Gonzales, Esquire  
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**MEMORANDUM OF LAW IN SUPPORT OF**  
**MOTION OF ASBURY PARK POLICE DEPARTMENT'S**  
**TO DISMISS PLAINTIFFS' COMPLAINT PURSUANT TO**  
**FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6)**

**I. BACKGROUND:**

Plaintiffs have filed a Complaint which is vague and ambiguous as to the exact causes of action which the plaintiffs seek relief. Essentially, it appears that plaintiffs are alleging false arrest and violation of various civil rights, although an individual plaintiff is not actually named in the Complaint. Rather, various organizations are the named plaintiffs.

Notwithstanding this apparent flaw, plaintiffs fail to cite any specific statutes or laws that the defendants violated. Moreover, plaintiffs have asserted a cause of action against a public entity from the State of New Jersey, named the Asbury Park Police Department. Because this court lacks jurisdiction to entertain this lawsuit because the Asbury Park Police Department is not a resident of this venue, the motion to dismiss must be granted.

## **II. STANDARD OF REVIEW:**

Federal Rule of Civil Procedure 12(b)(6) permits a Court to dismiss all or part of an action for failure to state a claim upon which relief can be granted. In ruling on a 12(b)(6) Motion, the Court must accept as true all well pleaded allegations of fact, and any reasonable inferences that may be drawn therefrom, in the Plaintiff's Amended Complaint and must determine whether "under any reasonable reading of the pleadings, the Plaintiff may be entitled to relief." Nami v. Fauver, 82<sup>nd</sup> F.3d 63, 65 (3<sup>rd</sup> Cir. 1996). "The Amended Complaint will be deemed to have alleged sufficient facts if it adequately puts the defense on notice of the essential elements of the Plaintiff's cause of action." Id.

Although the Court must construe the Amended Complaint in the light most favorable to the Plaintiff, it need not accept as true legal conclusions or unwarranted factual inferences. Claims should be dismissed under Rule 12(b)(6) only if "it appears beyond doubt that the Plaintiff can prove no set of facts in support of her claim which would entitle her to relief." Id.

## **III. ALLEGATIONS IN PLAINTIFF'S' COMPLAINT:**

Plaintiffs' Complaint curiously does not contain specific counts against moving Defendants. Throughout this Complaint, plaintiffs make various vague and ambiguous allegations against the moving defendant without providing specifics as to the statute and/or law

which the allegations are based on. It is thus impossible to guess as to the causes of action brought by the plaintiffs.

**IV. ARGUMENT:**

**Plaintiff's Complaint Must Be Dismissed For Improper Venue**

Plaintiffs have brought suit against Moving Defendant in the Eastern District of Pennsylvania. Moving Defendant is a public entity in the State of New Jersey only.

"The district court of a district in which is filed a case laying venue in the wrong division or district shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought." 28 U.S.C. § 1406(a). A defendant may assert improper venue in a motion to dismiss. Fed. R. Civ. P. 12(b)(3). Venue is clearly improper in this court and in violation of 28 USC § 1391 (b). Moreover, Plaintiffs have failed to state why venue is proper in this court.

28 USC § 1391 (b) states:

A civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought.

Moving Defendant is a public entity within the State of New Jersey, therefore, venue is not proper. Accordingly, Moving Defendant requests that Plaintiffs' Complaint be dismissed due to improper venue.

WHEREFORE, moving Defendant respectfully requests that this Honorable Court grant moving Defendant's Motion to Dismiss Plaintiffs' Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6) and dismiss Plaintiffs' Complaint with prejudice.

Respectfully submitted,

MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOGGIN

s/JG847  
\_\_\_\_\_  
JOHN P. GONZALES, ESQUIRE  
Attorney for Defendants  
Suite 1002, One Montgomery Plaza  
Norristown, PA 19401  
610-292-4470 (Phone)  
610-292-0410 (Fax)  
jgonzales@mdwgcg.com  
PA 71265

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**CERTIFICATE OF SERVICE**

I, John P. Gonzales, Esquire, do hereby certify that a true and correct copy of Motion of Defendant, Asbury Park Police Department, to Dismiss Plaintiffs' Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6), was served upon Plaintiffs by Certified Mail and Overnight Mail and all other parties by first class mail on February 18, 2005 at the following addressees:

Post Office Box 55  
Asbury Park, New Jersey 07712

MARSHALL, DENNEHEY, WARNER,  
COLEMAN & GOGGIN

s/JG847

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JOHN P. GONZALES, ESQUIRE  
Attorney for Defendants  
Suite 1002, One Montgomery Plaza  
Norristown, PA 19401  
610-292-4470 (Phone)  
610-292-0410 (Fax)  
jgonzales@mdwcg.com  
PA 71265



